IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1118 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VANMALIBHAI @ NAGJI KARMABHAI

Versus

STATE OF GUJ.

Appearance:

MR SR DIVETIA FOR MR. KG SHETH for Appellant

MR KC SHAH, APP for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE C.K.BUCH

Date of decision: 09/08/2000

ORAL JUDGEMENT (PER: K.R.VYAS, J)

1. The appellant, who is convicted for the offence punishable under sec.302 of IPC by the learned Addl. Sessions Judge, Surat on 24.9.1993 in Sessions Case No. 130/92, filed Misc. Cri.Appeal No.3859/2000 for bail. For the purpose of deciding said application, we have called for papers of this appeal. Considering the facts and circumstances of the case and more particularly the convict is in jail since 1992, we have decided to hear this appeal after granting time to the learned APP to prepare himself in the matter. Accordingly, today, this appeal is heard and disposed of by this judgment.

2. As can be seen from charge (exh.3), incident in question took place on 18.3.1992 at about 8.30 P.M. in the night at village Pitalda of Mangarol taluka, when appellant, after chasing P.W.5 Mansukh (exh.17) and deceased Amirbhai @ Champakbhai, inflicted one knife blow on the right mid lumber region of abdomen of deceased Amirbhai in the house of Kuvarji Margia-P.W.3 (exh.15) with the result Amirbhai died. It is the prosecution case that Mansukhbhai abducted wife of the appellant and because of same, there was enmity between the appellant and Mansukhbhai.

3. The prosecution, in order to bring home charge, has mainly relied on the evidence of Mansukhbhai P.W.5 (exh.17), Kuvarji P.W.3 (exh.15) who are eye-witnesses and Ravinbhai P.W.4 (exh.16)- supporting witness. Dr. Rameshprasad Jayprakash Singh, who at the relevant time was serving as Medical Officer at village Zankhavav, performed post mortem of the deceased and found following injuries on the person of the deceased:-

"(1) A penetrating incised wound on Rt.Mid Lumber region abdomen of size about 5 cm. length directed slight upward forward towards left. Wound having clear cut margin, but abrasion on lower end.

Portion of mesentery protruding from lower margin of wound. "

According to Dr.Singh, injury was ante-mortem. Dr. Singh opined about the cause of death by stating "Hemorrhage shock due to Rupture (cutting) of mesenteric vessels and intestinal perforation following penetrating injury on abdomen. ". In view of medical evidence, it cannot be disputed that the deceased died of homicidal death.

4. Mr.S.R.Divetia, learned counsel appearing for the appellant, after inviting our attention to the evidence of eye-witnesses, submitted that even if prosecution case

is accepted in toto, the appellant cannot be convicted for the offence punishable under sec.302 of IPC. In the submission of Mr. Divetia, the appellant, at the most, can be convicted for the offence punishable under sec.304 Part:I of IPC. Mr. K.C.Shah, learned APP, on the other hand, supported the judgment of the trial Court in toto.

5. Kuvarji Margia P.W.3 (exh.15) at whose house incident has taken place, in his evidence, has stated that the incident has taken place at about 8.30 P.M. in the night and it was a Holi day. According to him, Mansukhbhai and Champakbhai came running to his house and when Champakbhai was about to enter the house, appellant inflicted knife blow on the right portion of abdomen of the deceased. He thereafter caught hold of deceased and took him inside the house. He and P.W.5 Mansukhbhai thereafter shouted for help. On hearing the shouts, Ravinbhai and one Kishanbhai came there running. They caught hold of appellant and took out knife from him. While appellant tried to run away, they tied him with rope. P.W.4 Ravinbhai thereafter informed one Dhanjibhai who thereafter came with Police Patel. According to him, thereafter they tried to get the vehicle for taking deceased to the hospital. However, they did not get any vehicle and the deceased died at about 12.30 on the same night. According to this witness, Mansukhbhai abducted wife of the deceased. He has further stated that Mansukhbhai is the brother of the deceased. In the cross-examination, he has admitted that Mansukhbhai and the deceased were also his relatives. He has also admitted that Mansukhbhai abducted wife of the convict a year prior to the incident and he was fined Rs.751/ by caste members. In the cross-examination of this witness, nothing substantial has been taken out and the witness has sticked to his version in the examination-in-chief. This witness has been corroborated by P.W.5 Mansukhbhai as well as P.W.4 Ravinbhai. Reading evidence of this eye-witness, it is clear that the appellant was running after Mansukhbhai as well as the deceased. For the purpose of saving themselves, they entered the house of Kuvarji P.W.3. However, deceased sustained injury when he was about to enter the house of Kuvarji. Mansukhbhai, in his evidence, in cross-examination, has clearly admitted that he was in love with the wife of the appellant and has abducted her on two occasions. He has further stated that at the instance of the appellant, he was fined by the caste members. He also admitted that Laxmiben, wife of the appellant, is residing with him after the appellant was sent to prison. In view of evidence on record, it is clear that the appellant was bearing grudge against P.W.5 Mansukhbhai as on two

occasions, his wife was abducted by this witness. In view of the fact that on the day of incident he ran after P.W.5 Mansukhbhai, it might be a mere co-incident that deceased was also there and was also running along with P.W.5 Mansukhbhai. It is unfortunate that deceased sustained injury at the hands of the appellant when it was not meant for him. Thus, the deceased succumbed to injuries at the hands of the appellant and therefore, the question arises for consideration is whether the appellant can be held responsible for committing offence punishable under sec.302 of IPC ? Admittedly, there was no intention on the part of the appellant to commit murder of the deceased. Motive to commit such an offence is also absent. As stated above, deceased as well as P.W.5 Mansukhbhai were running together and though Mansukhbhai entered the house first in point of time, that does not mean that the deceased was far at a distance. Under the circumstances, it is quite possible that instead of causing injury to P.W.5 Mansukhbhai, blow might have landed on the person of the deceased. Thus, it appears to us that injury on the person of the deceased was not intentional one. The fact that appellant inflicted only one blow not on the vital part of the body, is also a factor to be considered while considering the offence in question. The appellant also did not make any attempt to inflict any blow. The fact that injury sustained by the deceased on the right portion of the abdomen and not on the front portion of the abdomen, is a circumstance in favour of the appellant namely that there was no intention on his part to commit murder of the deceased. However, the appellant was armed with deadly weapon like knife and caused injury on the right portion of abdomen and, therefore, it can be inferred that he was having knowledge that injury may or may not cause death. If the matter is considered from this angle, we are of the opinion that the appellant, at the most, can be convicted for the offence punishable under sec.304 Part:I of IPC. Thus, in our opinion, the learned trial Judge was in error in convicting the appellant for the offence punishable under sec. 302 of IPC. We, therefore, convict the appellant for the offence punishable under sec.304 Part:I of IPC and set aside the conviction of the appellant under sec.302 of IPC passed by the learned trial Judge. So far as the question of sentence is concerned, since the appellant has already undergone actual sentence of 6 Years 6 Months and 11 Days and was under-trial prisoner for 1 1/2 years, we are of the opinion that sentence already undergone shall serve the ends of justice.

6. In the result, this appeal is partly allowed.

The conviction for the offence punishable under sec.302 IPC passed against the appellant accused is set aside. Appellant is convicted for the offence punishable under sec.304 Part:I of IPC and is sentenced to suffer R/I already undergone. Appellant accused be set at liberty forthwith if not required to be detained in any other case.

9.8.2000 [K.R. VYAS, J]

[C.K. BUCH, J]

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